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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ALFONSO MARTINEZ MURRIETTA,

Defendant and Appellant.

G040074

(Super. Ct. No. 07CF3036)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Thomas J. Borris, Judge. Appeal dismissed.

Wilson Adam Schooley, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * *

Defendant Alfonso Martinez Murrietta was charged by information with one count of possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)), and one count of possession of an “opium pipe” (Health & Saf. Code, § 11364, subd. (a)). On the date set for trial, the court granted defendant’s motion to withdraw his not guilty plea to count 1, possession of methamphetamine, and accepted his guilty plea to that charge. Count 2, possession of the opium pipe, was dismissed on motion of the People. The court sentenced him to the low term of 16 months in state prison.

As the factual basis for his guilty plea, defendant stated: “In Orange County, California, on 9-10-07, I willfully + unlawfully possessed a usable quantity of methamphetamine, while knowing it was a controlled substance.”

We appointed counsel to represent defendant on appeal. Counsel filed a brief which set forth the facts of the case. Counsel did not argue against his client, but advised the court no issues were found to argue on defendant’s behalf. Counsel requested we conduct an independent review of the entire record. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was given 30 days to file written argument in his own behalf. That period has passed, and we have not received any communication from defendant.

Pursuant to *Anders v. California* (1967) 386 U.S. 738, counsel suggested we consider several issues in conducting our independent review of the record. Upon conducting our review of the entire record, including a consideration of those issues suggested by counsel, we agree with counsel’s assessment of this case. There are no arguable issues.

Defendant Waived His Right to Appeal

As part of his plea, defendant waived his right to appeal by initialing the paragraph on the plea form which stated: “I understand I have the right to appeal from decisions and orders of the Superior Court. I waive and give up my right to appeal from

any and all decisions and orders made in my case, including motions to suppress evidence brought pursuant to Penal Code section 1538.5. I waive and give up my right to appeal from my guilty plea. I waive and give up my right to appeal from any legally authorized sentence the court imposes which is within the terms and limits of this plea agreement.” When the plea was taken, defendant told the court he had placed his initials on all pages of the plea form and had signed the fourth page. He acknowledged he had “placed those initials and [his] signature[] on this document in order to convince [the court] that [he did] understand all of [his] constitutional rights, and that [he] want[ed] to renounce those rights for today so [he] can enter [his] plea[] of guilty.” When asked whether he had “any questions about [his] constitutional rights, or . . . what’s going to happen to [him] in [his] case,” defendant answered “no.” Defendant also acknowledged that no one had “made some threat to harm [him] or harm any member of [his] family or loved ones that’s causing or forcing or convincing [him] to say guilty.”

“[A] defendant may validly waive his right to appeal as part of a plea bargain. A waiver of appeal is proper, ‘provided such waiver is knowing, free and intelligent.’” (*People v. Kelly* (1994) 22 Cal.App.4th 533, 535.) Here, “[t]he record demonstrates defendant’s waiver of the right to appeal was made with full knowledge and understanding of the consequences.” (*Id.* at p. 536.) “In exchange, defendant received and well understood he was receiving, significant benefits, including the dismissal of [one count of possession of an opium pipe] and a sentence limit.” (*Ibid.*)

Accordingly, defendant’s appeal is not cognizable. It must be dismissed.

Other Issues Suggested by Counsel Are Not Cognizable

Counsel suggests we review defendant’s sentence to determine (1) whether it was unreasonable or based on invalid or inappropriate criteria, (2) whether it awarded proper custody credits, (3) whether it was supported by a probation report, (4) whether counsel provided inadequate assistance in connection with the sentencing, and (5)

whether the restitution fine of \$200 imposed by the court was proper. As part of his plea bargain, defendant waived his right to appeal “any legally authorized sentence the court imposes which is within the terms and limits of this plea agreement.” The plea agreement provided for a state prison term of 16 months, with credit for time served of 222 days (148 days actual and 74 days conduct credit), and a restitution fine between \$200 and \$10,000. The court’s sentence, custody credits, and restitution fine were all imposed precisely as agreed, and the sentence, credits, and fine were all legally authorized. (Health & Saf. Code, § 11377, subd. (a) [violation punishable by imprisonment in the state prison]; Pen. Code, § 18 [“Except in cases where a different punishment is prescribed by any law of this state, every offense . . . punishable by imprisonment in a state prison, is punishable by imprisonment in any of the state prisons for 16 months, or two or three years”]; Pen. Code, § 4019, subd. (f) [“if all days are earned under this section, a term of six days will be deemed to have been served for every four days spent in actual custody”]; Pen. Code, § 1202.4, subd. (b)(1) [restitution fine authorized in amount not less than \$200].) Further, defendant waived the preparation of a probation report and requested immediate sentencing.

There is nothing in the record on appeal suggesting that counsel was ineffective. If matters occurred off record, defendant’s relief is by way of habeas corpus.

Finally, counsel suggests we consider whether defendant’s plea was “knowing, intelligent, and otherwise valid.” But defendant may not challenge the validity of his plea unless he first obtains a certificate of probable cause to appeal. (Pen. Code, § 1237.5; *People v. Mendez* (1999) 19 Cal.4th 1084, 1095.) Defendant applied for the certificate, but it was denied. Thus, we may not consider the validity of his plea.

We have examined the entire record and have not found an arguable issue.
(*People v. Wende, supra*, 25 Cal.3d 436.) The appeal is dismissed.

IKOLA, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

BEDSWORTH, J.